

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #9	CCRB Case #: 201601569	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/19/2016 8:30 PM	Location of Incident: Kings Highway and East 98th Street	Precinct: 67	18 Mo. SOL 8/19/2017	EO SOL 8/19/2017	
Date/Time CV Reported Fri, 02/26/2016 9:45 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 02/26/2016 9:45 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM William Pugliese	12760	953278	067 PCT
2. POM Steven Lavin	02918	952971	067 PCT
3. POM Garrett Gorham	12001	925375	067 PCT
4. POM William Elias	02640	944534	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM William Pugliese	Abuse: Police Officer William Pugliese stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Garrett Gorham	Abuse: Police Officer Garrett Gorham stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM William Pugliese	Force: Police Officer William Pugliese pointed his gun at § 87(2)(b)	
D.POM Garrett Gorham	Abuse: Police Officer Garrett Gorham drew his gun.	
E.POM William Pugliese	Discourtesy: Police Officer William Pugliese spoke discourteously to § 87(2)(b)	
F.POM William Pugliese	Abuse: Police Officer William Pugliese threatened § 87(2)(b) with the use of force.	
G.POM Garrett Gorham	Abuse: Police Officer Garrett Gorham threatened § 87(2)(b) with the use of force.	
H.POM Garrett Gorham	Force: Police Officer Garrett Gorham used physical force against § 87(2)(b)	
I.POM William Pugliese	Abuse: Police Officer William Pugliese searched the vehicle in which § 87(2)(b) was an occupant.	
J.POM Garrett Gorham	Abuse: Police Officer Garrett Gorham searched the vehicle in which § 87(2)(b) was an occupant.	
K.POM Steven Lavin	Abuse: Police Officer Steven Lavin searched the vehicle in which § 87(2)(b) was an occupant.	
L.POM William Elias	Abuse: Police Officer William Elias searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On February 19, 2016, § 87(2)(b) was driving his car near the intersection of Kings Highway and East 98th Street in Brooklyn, when was pulled over by PO William Pugliese and PO Garrett Gorham, both of the 67th Precinct (**Allegations A and B**), allegedly for reckless endangerment. PO Pugliese pointed his gun at § 87(2)(b) and PO Gorham drew his gun in § 87(2)(b)'s presence (**Allegations C and D**). PO Pugliese allegedly stated, "I'm going to shoot you in your fucking face, and PO Gorham allegedly said, "Do you want to die today?" (**Allegations E, F, and G**). PO Gorham then allegedly pulled § 87(2)(b) out of his vehicle, allegedly pushed him against the side of a patrol car, and handcuffed him (**Allegation H**). PO Steven Lavin and PO William Elias, also of the 67th Precinct, then arrived on scene to take § 87(2)(b)'s car back to the precinct stationhouse. PO Pugliese, PO Gorham, PO Lavin, and PO Elias then all allegedly searched § 87(2)(b)'s car at the intersection of East 98th Street and Kings Highway (**Allegations I, J, K, and L**).

§ 87(2)(b) was arrested for § 87(2)(b) as a result of this incident (Board Review 1).
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

No video footage was available for this incident.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation due to § 87(2)(b)'s arrest. § 87(2)(b)
[redacted]
- As of April 11, 2016, a FOIL request submitted to the comptroller's office yielded negative results (Board Review 3).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[redacted]
[redacted]
[redacted]
[redacted]

Civilian and Officer CCRB Histories

- This is the third CCRB complaint filed by or on behalf of § 87(2)(b) § 87(2)(b)
[redacted]
[redacted]
[redacted]
- PO Pugliese has been a member of service for three years. This is the third CCRB complaint filed against him. Two prior CCRB allegations have been filed against him. The first, case 201307237, involved an unsubstantiated gun pointed allegation. The second, case 201401311, featured an unsubstantiated physical force allegation (Board Review 6).
- PO Gorham has been a member of service for 16 years. He has had twelve prior CCRB complaints filed against him, for a total of thirty-one allegations (Board Review 6).
 - In case 201310799, the CCRB substantiated a vehicle stop and discourteous language allegations, § 87(4-b) § 87(2)(g) [redacted]

§ 87(4-b) § 87(2)(g) The NYPD did not discipline PO Gorham for the vehicle stop allegation. PO Gorham received two counts of Command Discipline B, for the use of discourteous language § 87(4-b) § 87(2)(g)

- § 87(2)(g)
- PO Lavin has been a member of service for three years. This is the first CCRB complaint filed against him (Board Review 6).
- PO Elias has been a member of service for eight years. One prior CCRB complaint, with one allegation, has been filed against him (Board Review 6).

Findings and Recommendations

§ 87(2)(g)

Allegation A – Abuse of Authority: Police Officer William Pugliese stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B—Abuse of Authority: Police Officer Garrett Gorham stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Pugliese and PO Gorham stopped § 87(2)(b)'s vehicle. § 87(2)(g)

§ 87(2)(b) claimed that he was stopped at the intersection of East 98th Street and Kings Highway in Brooklyn. He testified that he saw the officers' flashing lights and immediately pulled over. He stated that he pulled in front of a car that was taking too long to make a left turn on Kings Highway, but that he put on his turn signal prior to turning, and before he saw the flashing lights. § 87(2)(b) denied committing any traffic infractions before being pulled over (Board Review 2).

PO Pugliese stated that he first observed § 87(2)(b) at the intersection of Kings Highway and East 98th Street, and that § 87(2)(b) failed to signal a turn at this intersection. PO Pugliese also observed that § 87(2)(b)'s bicycle rack obscured his license plate. As a result, he stated that he activated his safety lights, but did not take any other actions to stop § 87(2)(b)'s car. He stated that § 87(2)(b) swerved his car around two or three cars in order to get away from PO Pugliese's car. PO Pugliese estimated that § 87(2)(b) was driving at 35 miles per hour in a 25 mile-per-hour lane. PO Pugliese's car followed § 87(2)(b) for approximately 500 feet before he was able to pull over § 87(2)(b) and PO Pugliese put on his safety lights twice before stopping § 87(2)(b). § 87(2)(b) stopped immediately after PO Pugliese put on his safety lights on for the second time (Board Review 7).

PO Gorham also stated that § 87(2)(b) was pulled over for fleeing from police, but his account of the stop differed from that of PO Pugliese. PO Gorham stated that he first observed § 87(2)(b) on Kings Highway "in the low East 90th Streets." Within twenty minutes of seeing § 87(2)(b)'s vehicle, § 87(2)(b) failed to signal a turn from the right to left lane. PO Gorham testified that PO Pugliese immediately put on his sirens and safety lights as a result. In his interview, PO Gorham initially stated that § 87(2)(b) did not make any additional turns after the initial turn for which he was stopped, but after viewing the arrest report, PO Gorham changed his testimony to state that § 87(2)(b) swerved between two cars. PO Gorham stated that § 87(2)(b)

drove for two to three blocks, and that PO Pugliese put on the sirens and safety lights twice. Mr. PO Gorham did not remember the speed at which § 87(2)(b)'s car was moving. According to PO Gorham, § 87(2)(b) was stopped at East 98th Street and Kings Highway (Board Review 8). § 87(2)(b)'s arrest report, as completed by PO Pugliese, gives the arrest location as East 98th Street and Kings Highway. It states that § 87(2)(b) failed to signal a turn, and after PO Pugliese attempted to stop him, he swerved between two cars at a high rate of speed (Board Review 1).

§ 87(2)(g)

Allegation C-Force: Police Officer William Pugliese pointed his gun at § 87(2)(b)

Allegation D-Abuse of Authority: Police Officer Garrett Gorham drew his gun

It is undisputed that PO Pugliese drew and pointed his gun at § 87(2)(b) § 87(2)(g)

§ 87(2)(b) alleged that after PO Pugliese stopped § 87(2)(b)'s vehicle, PO Pugliese approached the vehicle with his gun pointed at § 87(2)(b). § 87(2)(b) also alleged that PO Gorham approached his vehicle with his gun drawn, but not pointed (Board Review 2).

PO Pugliese admitted to having his gun drawn and pointed at § 87(2)(b). PO Pugliese stated that when he first approached the car, he could not see § 87(2)(b) because § 87(2)(b) had curtains hanging in the windows of his car. PO Pugliese also stated that he asked § 87(2)(b) to show him his hands three times, and that § 87(2)(b) only complied after the third request. PO Pugliese stated that he lowered his firearm when he was able to see § 87(2)(b)'s hands. PO Pugliese also stated that PO Gorham had his gun drawn during the incident (Board Review 7).

PO Gorham also stated that PO Pugliese had his gun drawn and pointed at the driver's side window of the car. PO Gorham corroborated that there were curtains obstructing the driver's side window. PO Gorham denied having his gun drawn, but he stated that he feared for his safety, because the curtains on the vehicle prevented him from seeing the driver, who had fled from officers (Board Review 8).

PO Lavin arrived after § 87(2)(b) was placed under arrest. He transported § 87(2)(b)'s vehicle to the 67th Precinct stationhouse. He stated that when he did so, he needed to move the curtains, which obstructed his view of the road (Board Review 9).

People v. Gliner. OATH Index 955/00 permits officers to draw or point their guns when they have a reasonable fear for their or another's safety (Board Review 10).

§ 87(2)(g)

Allegation E – Abuse of Authority: Police Officer William Pugliese threatened § 87(2)(b) with the use of force.

Allegation F –Abuse of Authority: Police Officer William Pugliese spoke discourteously to § 87(2)(b)

Allegation G – Abuse of Authority: Police Officer Garrett Gorham threatened § 87(2)(b) with the use of force.

Allegation H — Force: Police Officer Garrett Gorham used physical force against § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) testified that when PO Pugliese and PO Gorham first approached his car, PO Pugliese stated, “I’m going to shoot you in your fucking face,” and that PO Gorham said, “Do you want to die today?” § 87(2)(b) stated that when he opened the door to his vehicle, PO Gorham pulled him out of the car, and pushed him against the side of the car to handcuff him (Board Review 2).

PO Pugliese denied that he said, “I’m going to shoot you in your fucking face,” and also denied that he or PO Gorham threatened § 87(2)(b) with the use of force. PO Pugliese stated that he guided § 87(2)(b) out of the vehicle by placing his hands on § 87(2)(b) because § 87(2)(b) was not obeying his commands. PO Pugliese denied that any officer pushed § 87(2)(b) against the side of a car (Board Review 7).

PO Gorham also stated that neither he nor PO Pugliese made these statements. PO Gorham stated that when § 87(2)(b) opened the door to his car, PO Gorham placed his hand on § 87(2)(b) in order to gauge his reaction to being arrested, but that he did not pull him out of the car, or push him against the side of the car (Board Review 8).

§ 87(2)(g)

Allegation I –Abuse of Authority: Police Officer William Pugliese searched the vehicle in which § 87(2)(b) was an occupant.

Allegation J –Abuse of Authority: Police Officer Garrett Gorham searched the vehicle in which § 87(2)(b) was an occupant.

Allegation K –Abuse of Authority: Police Officer Steven Lavin searched the vehicle in which § 87(2)(b) was an occupant.

Allegation L –Abuse of Authority: Police Officer William Elias searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that after § 87(2)(b) was placed under arrest, PO Lavin and PO Elias arrived on scene to transport § 87(2)(b)'s vehicle to the 67th Precinct stationhouse. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) stated that after he was handcuffed, all four officers searched the front seat of his vehicle, before they transported him to the stationhouse for arrest processing (Board Review

2). All four officers denied doing so, and denied that any officer conducted a vehicle search at the scene of the arrest. They all stated that PO Lavin was the sole officer to enter § 87(2)(b)'s car on, and that he merely transported the vehicle to the 67th Precinct stationhouse shortly after he arrived on scene (Board Review 7, 8, 9, and 11).

§ 87(2)(g)

Squad #9

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date